

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MP VISTA, INC., HABIB PETROLEUM,  
WARREN'S SHELL, INC., INDIVIDUALLY  
AND ON BEHALF OF THOSE  
SIMILARLY SITUATED

NO. 1:07-CV-00099-\*\*\*

VERSUS

MOTIVA ENTERPRISES, LLC AND SHELL  
OIL COMPANY

**APPENDIX TO PLAINTIFFS' ANSWERING  
BRIEF IN OPPOSITION TO MOTION TO TRANSFER**

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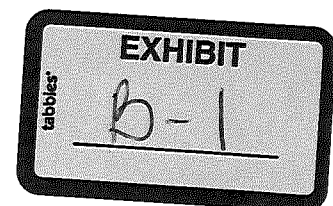
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DONNA E. NATALE PLANAS/HERALD STAFF

**OUT OF GAS:** Two men push a car to a Shell station in North Bay Village last week. Unfortunately, there was no gas to be had due to the high sulfur content discovered in some Shell and Texaco gasolines.



**To:** Shell and Texaco Retailers and Jobbers  
**Re:** Regular and Plus Grade Gasoline Product Quality Concern  
Tampa and Southeast Florida Markets

We have identified a product quality issue with Regular and Plus gasoline delivered from our terminals in Tampa and Port Everglades.

The following information will be released to the media about this situation.

## CONSUMER ADVISORY

May 27, 2004

### Florida Gas Gauge Advisory

Motiva Enterprises LLC has determined that some gasoline delivered into its Tampa and Port Everglades Distribution Terminals contain elevated levels of sulfur. The elevated levels of sulfur may cause gas gauge sensors on some vehicles to malfunction; however, these elevated sulfur levels are not known to affect engine performance or cause engine damage.

Motiva is temporarily ceasing the sale of regular and mid-grade gasoline from these terminals; however, premium gasoline continues to meet quality specifications and will continue to be sold.

Some Texaco and Shell-branded stations supplied by the Tampa and Port Everglades Terminals are suspected of receiving gasoline with elevated levels of sulfur. Because the quality of our gasoline is paramount to us, we have elected to temporarily halt selling regular and mid-grade gasoline at stations where we suspect the gasoline has been affected. Premium gasoline will continue to be sold at regular grade prices. We are working to remedy the situation at affected locations to ensure the integrity of our product.

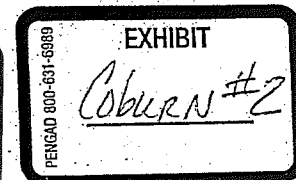
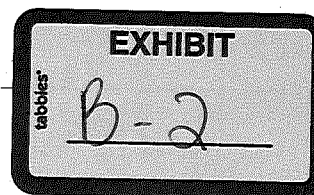
Customers experiencing unusual gas gauge readings are encouraged to monitor their mileage or to keep fuel tanks filled in order to prevent run-outs. Shell stands behind its products and affected customers can contact Shell at **1-866-562-6690** for further information and assistance.

Third-party terminals used by Motiva located in Jacksonville, Panama City and Niceville are unaffected by this fuel quality issue. Product tests are underway at third-party terminals used by Motiva in Pensacola and Orlando to verify product quality.

Motiva and Shell regret this occurrence and are working diligently and applying all appropriate resources to resolve known and suspected sulfur issues affecting fuel quality as quickly as possible. In addition, we are also working closely with affected parties to help ensure adequate supplies of gasoline for our customers.

- End Of Advisory -

Exhibit B



MOT. LS - 00081

If you have been notified by your Sales Consultant or your Sales Manager, your station must stop selling Plus gasoline as well as Regular, whether you blend Plus at the station or receive Plus from one of these terminals.

We are working to remedy this situation as quickly as possible at stations that have been affected.

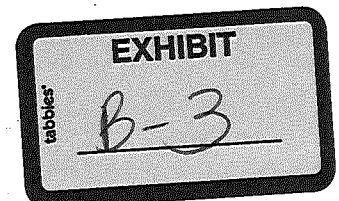
In the interim, we have reduced RTW and MTW prices for Premium to match Regular prices. This will be reflected on your invoice. We strongly encourage you to sell Premium to your customers at the price of Regular.

At this time, there is no additional information available; however, be assured that we will communicate with you as soon as we know more.

If your station has not been notified to stop selling gasoline, you should feel confident that your fuel meets the high standards required by Shell.

If you have any questions, you may contact your Shell representative; however, at this time they may have no additional information.

Please be assured that we will communicate with you as soon as new information is available.



MOT. LS - 00081

**To:** Shell and Texaco Retailers and Jobbers  
**Re:** Regular and Plus Grade Gasoline Product Quality Update  
 Tampa & Southeast Florida Markets

Product quality issues at the Motiva Enterprises LLC Tampa Terminal noted in our previous advisory have been resolved. All fuels at the Tampa Terminal have been thoroughly tested and meet our high fuel quality standards.

Distribution of Regular, Plus, and Premium gasoline from the Port Everglades Terminal suspended. We are working diligently to resolve this situation and will communicate the status in a future advisory.

The following advisory has been released to the media.

## MEDIA UPDATE

May 28, 2004

### Florida Gasoline Quality Issue

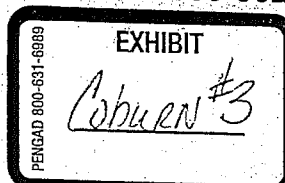
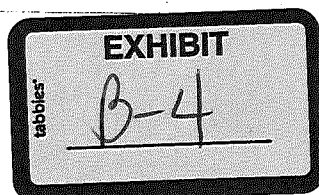
As of 6 a.m. EDT today, the Motiva Tampa Distribution Terminal began supplying customers with all grades of product. All grades being supplied from this terminal currently meet our fuel quality standards. Of 118 Shell and Texaco branded stations in the Tampa area originally affected, 20 continue to have their gasoline sales suspended. We are working diligently to restore those stations to full service.

As of last night, the Motiva Distribution Terminal in Port Everglades suspended the sale of premium grade gasoline due to recently detected elevated levels of sulfur. This follows the suspension of regular and mid-grade gasoline yesterday. Efforts are underway to supply the terminal with product that currently meets our fuel quality standards.

Sales of gasoline from Shell and Texaco branded stations supplied from the Motiva Port Everglades Terminal will not occur until such time as they are re-supplied with fuel that meets our fuel quality standards. We are working quickly and diligently to restore these stations to full service.

The elevated levels of sulfur may cause gas gauge sensors on some vehicles to malfunction; however, these elevated sulfur levels are not known to affect engine performance or cause engine damage. Customers experiencing unusual gas gauge readings are encouraged to monitor their mileage or to keep fuel tanks filled in order to prevent run-outs. Customers who believe that their vehicles' fuel gauges have been damaged by gasoline originating from Motiva Terminals can contact the Shell Customer Service Center at 1-866-562-6690. Customers are

Exhibit C



MOT. LS - 00095



asked to be patient and try again later if they experience difficulty in getting through to the Service Center.

Shell / Motiva Media Line: 713-241-1578

**Media Contacts:**

Helen Bow  
Shell Oil Company  
713-241-4544

Shawn Frederick  
Shell Oil Products US  
713-241-1571

**END OF ADVISORY**

Note to our Channel Partners:

- Specific stations impacted by this problem have been contacted by their Shell Representative and will be notified when the gasoline on site is ready for resale.
- If your station was not notified to stop selling gasoline, you should feel confident that your fuel meets the high standards required by Shell.
- Questions regarding credit and other payment issues generated by this event will be addressed in a communication you will receive shortly.
- Please direct any customer request for assistance or additional information to 1-866-562-6690
- A website has also been established for customers that wish to file a claim.  
[www.interactclaims.com/shell](http://www.interactclaims.com/shell)



MOT. LS - 00096

June 17, 2004

To: All Retail Channel Partners

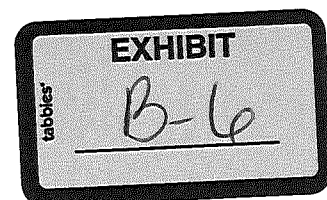
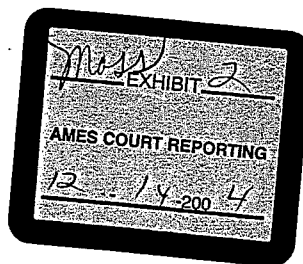
We believe we have acted swiftly to address the fuel gauge incidents that have occurred your market by focusing our efforts on the protection and safety of our customers, channel partners, and fellow employees. While we continue to work diligently on the reputation and trust of our brand to our customers, it is equally important to us that we do the same with you. Just as important as re-establishing that trust is recognizing the financial impact this had on your business. With this in mind, I am pleased to inform you that you will be receiving compensation to help with the hardship resulting from this temporary interruption of your business.

Specifically, you should receive a credit to your account within the next 48 hours to help mitigate the effect of this incident on your business. I personally want thank you for your patience as we worked together to identify and solve a difficult situation in a short period of time. If you have any questions, please don't hesitate to contact your Account Manager.

Shell is celebrating its 100<sup>th</sup> anniversary of the brand in the U.S. this year. I believe that one of the principal reasons the company has reached such an important milestone is because of the relationships we have built with our customers. Providing quality fuels has always been at the core of our business and I commit to you that we will continue that tradition as we embark on our second century of doing business in the U.S.

Regards,

David Moss  
General Manager – South Region



MOT.LS - 0220



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

LIBERTY SHELL, INC.,  
INDIVIDUALLY AND ON BEHALF  
OF ALL OTHERS SIMILARLY  
SITUATED

versus

SHELL OIL COMPANY, SHELL  
OIL PRODUCTS USA, MOTIVA  
ENTERPRISES, L.L.C.

- \* CIVIL ACTION NO. 04-1770
- \* SECTION "B"
- \* MAGISTRATE 4
- \* HONORABLE IVAN L.R. LEMELLE
- \* MAGISTRATE KAREN WELLS ROBY
- \*

\*\*\*\*\*

DEFENDANTS' RESPONSE TO REQUEST FOR ADMISSION

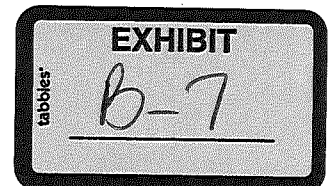
NOW INTO COURT, through undersigned counsel, come Motiva Enterprises LLC, Shell Oil Company, and Shell Oil Products Company LLC (collectively "Defendants") to respond as follows to the Request for Admission served by the plaintiff on September 10, 2004.

REQUEST FOR ADMISSION:

Please admit or deny that the elemental sulfur fuel sold to Liberty Shell, Inc. in May of 2004, did not meet Motiva Enterprises, LLC's then current specifications.

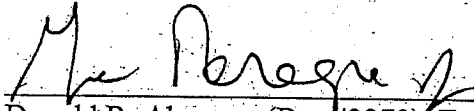
RESPONSE TO REQUEST FOR ADMISSION:

Motiva denies that all product manufactured during the relevant time period failed to meet specifications. Motiva admits that some quantities of gasoline processed during May 2004,



and delivered to the service stations recently identified to the plaintiff in response to plaintiff's interrogatories, may damage the fuel sending units of certain makes and models of automobiles.

Respectfully submitted,



Donald R. Abaunza (Bar #2273), T.A.

George Denegre, Jr. (Bar #8387)

Kelly T. Scalise (Bar #27110)

LISKOW & LEWIS

701 Poydras Street, Suite 5000

One Shell Square

New Orleans, LA 70139-5099

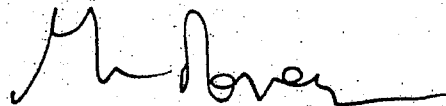
Telephone: (504) 581-7979

Facsimile: (504) 556-4108

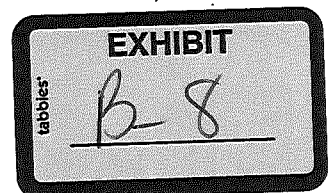
Attorneys for Motiva Enterprises LLC, Shell Oil Company, and Shell Oil Products Company LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been served upon all counsel of record via facsimile or by placing same in the United States mail, properly addressed and postage prepaid this 8<sup>th</sup> day of October, 2004.



537521\_1



24<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON  
STATE OF LOUISIANA

608-110

LIBERTY SHELL, <sup>INC.</sup> ~~INC.~~, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED

NUMBER: \_\_\_\_\_

SECTION: \_\_\_\_\_

VERSUS

SHELL OIL COMPANY, SHELL  
OIL PRODUCTS USA, MOTIVA  
ENTERPRISES, L.L.C.

**DIV. G**  
JUDGE  
ROBERT A. PITRE, JR.

DEPUTY CLERK  
PARISH OF JEFFERSON, LA

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CLASS ACTION PETITION FOR DAMAGES

<sup>INC.</sup> NOW ~~INC.~~, through undersigned counsel comes, Liberty Shell, ~~INC.~~, individually and on behalf of others similarly situated, a limited liability Louisiana company doing business in Jefferson Parish and respectfully states as follows:

I. INTRODUCTION

- (a) The petitioner, Liberty Shell, <sup>INC.</sup> ~~INC.~~, brings this class action on its own behalf and on behalf of all others similarly situated pursuant to La. C.C.P. art. 591, et seq.
- (b) Petitioner requests this Honorable Court allow it to prosecute claims against Shell Oil Company, its subsidiary Shell Oil Products USA and Motiva Enterprises, LLC via class action proceedings on behalf of all Louisiana gas station operators/owners who were supplied, since May 1, 2004, forward sulfur-tainted fuel from a Motiva Enterprises, L.L.C. refinery by Shell Oil Company or its subsidiary Shell Oil Products USA and suffered economic loss therefrom.
- (c) The petitioner individually and on behalf of all others similarly situated seek to prosecute this claim for the reasons hereinafter set forth and allege the following particulars, all based upon information and belief and reasonably reliable information obtained from various sources including public statements by the defendant(s), media reports and the public record.

II. PARTIES

- (a) Made petitioner herein is Liberty Shell, <sup>INC.</sup> ~~INC.~~, a Louisiana ~~INC.~~ company and doing business at all relevant times herein, as an independent gas station operator doing business in Jefferson Parish.
- (b) Made defendant herein is Shell Oil Company an active non-Louisiana corporation licensed to do and doing business in Louisiana and at all relevant times herein the owner of the distributor and refinery which distributed and refined the sulfur-tainted fuel in Louisiana in May of 2004.
- (c) Also made defendant herein is Shell Oil Products USA, a wholly owned subsidiary of defendant, Shell Oil Company and at all relevant times herein including May of 2004, the distributor of the sulfur-tainted fuel in Louisiana.



- (d) Also made defendant herein is Motiva Enterprises, L.L.C., a non-Louisiana limited liability company licensed to do and doing business in Louisiana and all relevant times herein the refiner of sulfur-tainted fuel at its Louisiana refinery.

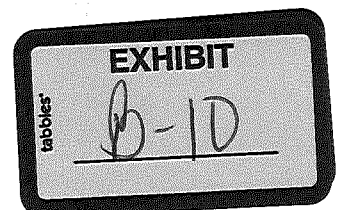
### III. FACTS

- (a) Prior to or during May of 2004, defendant, Motiva Enterprises LLC's Louisiana refinery produced fuel with unreasonably high levels of sulfur, which although naturally present in crude oil, can ruin vehicle fuel gauges and make empty tanks appear full, if not reasonably refined from the crude oil.
- (b) Defendant, Shell Oil company and/or its subsidiary, Shell Oil Products USA, distributed the sulfur-tainted fuel supplied by Motiva Enterprises, LLC to the petitioner and those similarly situated and heretofore defined, in May of 2004.
- (c) On or about May 27, 2004, the defendants ordered the gas pumps of the tainted fuel recipient gas stations in the New Orleans area, closed because of the voluminous number of consumer complaints resulting from the unknowing sale of the tainted fuel in Louisiana.
- (d) Upon information and belief 250 gas stations in the New Orleans area alone received the sulfur tainted fuel in May of 2004.
- (e) The petitioner and those similarly situated and heretofore defined experienced a drastic/monumental sales revenue and profit decline at a time (Memorial Day Weekend) when sales revenue are traditionally high.
- (f) Shell Oil Company has apologized for purveying the sulfur-tainted gas in Louisiana during May of 2004.

### IV. LIABILITY

Defendants, Shell Oil Company, Shell Oil Products USA and Motiva Enterprises as a result of the aforesaid acts and/or omissions breached its duties to the petitioner, Liberty Shell, <sup>IPC</sup> ~~IPC~~, and those similarly situated in the following non-exclusive manner:

1. Manufacturing sub-standard fuel (defective product), in that the Sulfur from the crude oil was insufficiently extracted;
2. Distributing sub-standard fuel with an excessive and damaging sulfur content;
3. Failure to warn the gas station owners/operators of Louisiana of the sulfur-tainted fuel resulting in petitioners dispensing/selling the same without warning to the consumer/end-user;
4. Failure to timely correct and remediate the damages flowing to the petitioner and those similarly situated from their receipt and sale of tainted fuel in May of 2004; and
5. Breaches of the Louisiana products liability law including failure to warn and manufacturing a defective product.



## V. DAMAGES

The petitioner and those similarly situated as a proximate result of the breaches of duty heretofore enumerated as to the named defendants have sustained the following damages:

1. Loss of revenue and corresponding profits;
2. Loss of future sales revenue and corresponding profits; and
3. Loss of business reputation;
4. Loss of goodwill;
5. Interruption of business;
6. Indemnification costs including damages and attorney fees resulting from anticipated litigation against the petitioner for the sale of tainted fuel;
7. Attorney fees and costs.

## VI. QUALIFICATION FOR CLASS ACTION

- (A) This action may be properly processed as a "Class Action" in accordance with Louisiana Code of Civil Procedure, article 591, *et seq.*, and accordingly, petitioners bring this class action on behalf of themselves as well as all other petitions/class members similarly situated, with petitioners herein proceeding as the representative members of the proposed class.
- (B) The Louisiana Class Action Procedure affords a *superior* vehicle for the efficient disposition of the issues and claims herein presented.
- (C) The aforementioned proposed class is so numerous, that a level of *numerosity* is presented which would be better handled through the class action procedure rather than a mass joinder of individual claims.
- (D) Though the exact number and identity of class members are not presently known, they can best be identified through coordinated discovery pursuant to this class action.
- (E) The questions of fact and law arising out of defendant's conduct as described above are common to all members of the class, and the common issues pertaining to the determination of fault and the liability for compensatory and exemplary damages *predominate* over the individual issues of quantum.
- (F) The determination of fault and the basis for assessment of damages may be made without the necessity of proof at this time as to the amount of those damages, thereby establishing guidelines for settlement and/or subsequent trials in individual cases if necessary.
- (G) Petitioners herein have sustained damages of the nature described herein above, and are suitable representatives of the class.
- (H) Plaintiff representatives herein are represented by a skilled attorney who is experienced in the handling of mass tort class actions and who may be

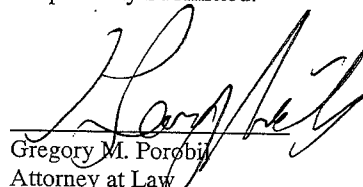


expected to handle this action in an expeditious and economical manner to the best interests of all of the above.

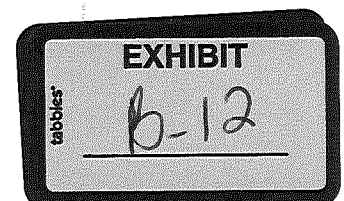
WHEREFORE, PETITIONERS, Liberty Shell, <sup>INC.</sup> ~~LLC~~, individually and on behalf of all others similarly situated, pray:

- i. That the defendants be served with a copy of this Class Action Petition for Damages and be duly cited to appear and answer same;
- ii. For an order certifying the Class Action pursuant to the applicable provisions of La. C.C.P. art. 591, *et seq.* for the purposes of determining the common issues of liability for damages, and appointing the petitioners and their counsel to represent not only petitioners but also the certified class;
- iii. That upon certification of the class action, the court call for the formulation of a suitable management plan pursuant to La. C.C.P. art. 593.1;
- iv. That after due proceedings are had, there be a judgment in this matter in favor of the petitioners and against the defendants for the compensatory damages due the petitioners and each member of the class, all alleged herein, and a will be proven in due course;
- v. That the rights of the petitioners and all members of the class to establish their entitlement to compensatory and the amounts thereof, be reserved for determination in their individual actions when appropriate;
- vi. The applicable pre-judgment interest, from date of judicial demand until the judgment and accrued interest are paid;
- vii. For costs of the prosecution of this action; and
- viii. For all other general and equitable relief as may be applicable under the facts and circumstances of this matter, including but not limited to creation of a future damages fund and payment of future related expenses, as this court may order in its discretion.

Respectfully Submitted:

  
 Gregory M. Porcibi  
 Attorney at Law  
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 New Orleans, LA 70119  
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MINUTE ENTRY  
LEMELLE, J.  
JULY 26, 2006

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

LIBERTY SHELL, INC.

CIVIL ACTION NO.

versus

04-1770

SHELL OIL CO., ET AL.

SECTION B(4)

A hearing was held in the above-captioned case regarding Plaintiff's Motion for Class Certification (Rec. Doc. No. 54). For the reasons orally assigned in Court,

IT IS ORDERED that the Plaintiff's Motion for Class Certification is DENIED WITHOUT PREJUDICE.

  
UNITED STATES DISTRICT JUDGE



A-22